

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of the)
Telecommunications Act of 1996)

Telemessaging,)
Electronic Publishing, and)
Alarm Monitoring Services)

CC Docket No. 96-152

DOCKET FILE COPY ORIGINAL

AMERITECH'S MOTION TO ACCEPT LATE-FILED COMMENTS

Ameritech respectfully files this Motion asking the Commission to accept the attached Comments of Ameritech in this matter one day after the due date, as if the same were timely filed. Although the date set by the Commission for filing these Comments was set for September 4, 1996, unforeseeable events beyond Ameritech's control prevented the transmission of this pleading from Hoffman Estates, Illinois to Ameritech's offices in Washington, D.C., and consequently, its timely filing as well.

Although "(i)t is the policy of the Commission that extensions of time shall not be routinely granted", ¹ the Commission may grant such relief "for good cause shown"². In the instant case, the receipt, on the afternoon of September 4, of a suspicious package by other tenants of the building (located at 1401 H. St. , N.W.) occupied by Ameritech's Washington D.C. offices caused the building security staff to order the evacuation of the entire premises for a period of approximately 1 1/2 hours. As this occurrence prevented the timely transmission and preparation of Ameritech's Comments in this

¹ 47 CFR § 1.46(a).

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matter, a one-day extension is warranted. Moreover, due to the large volume of materials expected to be filed at the Commission in this important matter, a delay of one day's time cannot be said to prejudice the rights of any party hereto.

Respectfully submitted,

A handwritten signature in cursive script, reading "Frank M. Panek".

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Dated: September 5, 1996

² 47 CFR § 1.3.

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COMMENTS OF AMERITECH

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COMMENTS OF AMERITECH

I. Introduction and Summary

Ameritech respectfully files these Comments in the above-captioned matter, in response to the Notice of Proposed Rule Making¹ released by the Commission on July 18, 1996. The Commission noted in the NPRM that "Congress sought to establish 'a pro-competitive, de-regulatory national policy framework' for the U.S. telecommunications industry."² These words from the Act's architects must be the touchstone of the Commission's implementation efforts. Instead, the policy framework proposed by the Commission in this proceeding, as well as Dockets 96-149 and 150, consists of layer upon additional layer of artificial regulatory constraints on full and fair competition. Instead of advancing toward the fully-competitive,

¹ In the Matter of Implementation of the Telecommunications Act of 1996; Telemessaging, Electronic Publishing, and Alarm Monitoring Services. CC Docket No. 96-152, FCC 96-310, Notice of Proposed Rulemaking, released July 18, 1996 (hereinafter "NPRM").

² NPRM (¶1), citing Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996).

customer-driven marketplace envisioned by Congress, the construct proposed in the NPRM would move backward. It would do so not only by leaving obsolete strata of outmoded regulation intact, but also adding further requirements that duplicate, and, in some cases, actually reduce the efficacy of, the old regulatory structure upon which they are overlaid. Specific instances, as well as answers to most questions posed in the NPRM, are in the remaining Sections of these Comments.

With respect to Section 274's separation requirement, Ameritech concludes that Section 272's separation duties are a subset of Section 274's requirements. Ameritech also concludes that Section 274 permits the aggregation of multiple Section 274 services within one separated affiliate. Reviewing some of the specific separation requirements of Section 274, Ameritech notes that several apply only to separated affiliates and not to electronic publishing joint ventures. Absent clear statutory language expansion of separation requirements of Section 274 is unnecessary and unwarranted.

To constitute "electronic publishing" by a BOC covered by Section 274, a service must utilize a database that can be reached by making a local call over the BOC's exchange networks and must fall outside the expansive exceptions to the definition of "electronic publishing." If the BOC does not create or alter the content, the service will not constitute electronic publishing under the Act.

Ameritech submits that to constitute alarm monitoring under Section 275, a service must fall within the definition of an information service. Neither "ScanAlert" service nor "Versanet" fall within the definition of information service. Ameritech also concludes that the term "provision" when used in

connection with alarm service activities means to provide the service on a direct or resale basis. It does not encompass billing and collection, acting as a sales agent or engaging in marketing. Finally, Ameritech takes the position that the terms "equity interest" and "financial control," as used in Section 275, should each be given their well established meaning.

Ameritech highlights that Section 272 exempts the provision of alarm monitoring services from the separate affiliate and nondiscrimination requirements of that section. Moreover, the prohibition on BOC entry into alarm monitoring services extends to both intraLATA and interLATA offerings.

The Commission's definition of "joint marketing" should recognize that : (1) unilateral marketing activity by either the BOC or its electronic publishing affiliate is not "joint marketing" and (2) permissible joint marketing activities - inbound telemarketing and referral services, teaming and business arrangements and electronic publishing joint ventures - override any restrictions contained in the "joint marketing" definition. The scope of permissible "inbound telemarketing" activities by a BOC on behalf of an electronic publisher should include all aspects of marketing, including price quotation, sales, promotion, gathering sales related information and processing orders. Congress adopted broad "teaming or business arrangements" permissible marketing activities choosing only three conditions that the BOC must satisfy to enter into such arrangements. In view of the BOC's nondiscrimination requirement for inbound telemarketing and teaming, the FCC should not limit the scope of permissible BOC joint marketing activities since

marketing activities that the BOC engages in with an affiliate will be available to non-affiliate electronic publishers on a nondiscriminatory basis.

II. Intrastate Jurisdictional Issues

The Commission asks whether, in light of its own earlier “tentative conclusion that Sections 271 and 272 give the Commission jurisdiction over intrastate information services including telemessaging, Section 260 can be read to give us jurisdiction over intrastate telemessaging services.”³ The Commission also asks “whether specific subsections of Section 274 confer intrastate authority (over electronic publishing) on the Commission.”⁴ Such an extension of the Commission’s authority is not warranted either by the Act’s explicit language or by implication therefrom.

³ NPRM (¶20). The only statutory support cited is the observation that “unlike Sections 271 and 272, the scope of Section 260, on its face, is not strictly limited to interLATA services” This “support” is illusory. Section 271 is entitled “BOC Entry Into InterLATA Services”; hence, rather than being “limited to interLATA services,” those services are the sole reason for Section 271’s existence.

⁴ NPRM (¶24).

Congress' delegation of additional jurisdiction to the Commission in other specific subject matter areas of the Act is clear and direct. For example, where the Act confers authority to enact specific regulations in the case of electronic publishing, the language specifically defers to "such regulations as may be prescribed by the Commission or a state commission".⁵ Similarly, in its treatment of numbering administration functions, the Act clearly directs that "(t)he Commission shall create or designate one or more impartial entities to administer telecommunications numbering".⁶

Section 260 confers upon the Commission very specific, extremely limited jurisdiction over telemessaging service (both intra and interLATA). The jurisdiction thus granted by the Act's words is limited to that required to hear complaints that an incumbent LEC has violated the prohibitions against cross-subsidy and discrimination.⁷ This is far from the grant of general jurisdiction over telemessaging services that the NPRM implies.

Likewise, Section 274's grant of jurisdiction to the Commission is both specific and limited. In this case, jurisdiction is limited to certain affiliated interest rules⁸ and hearing private complaints for damages and "cease and desist" orders.⁹ This focused grant of authority is also both express and limited by terms.

⁵ 47 U.S.C. §274(b)(4).

⁶ 47 U.S.C. §251(e)(1).

⁷ 47 U.S.C. §§260(a) and (b).

⁸ 47 U.S.C. §§274 (b)(3) and (4).

⁹ 47 U.S.C. §§274 (e)(1) and (2).

In contrast with these specific declarations of authority conferred upon the Commission, the Act contains no such words with respect to any form of general authority over telemessaging, electronic publishing or alarm monitoring services. This lack of express intent to confer general intrastate jurisdiction must be considered in light of other language in the Act clearly stating (with noted exceptions) that “nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to ... intrastate communications service”¹⁰ This much is clear: where FCC jurisdiction is intended by Congress, it is expressly conferred. Any argument for “implied intent” to confer general intrastate jurisdiction upon the Commission is cut off by clearly stating that “(t)his Act ... shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act....”¹¹

III. Electronic Publishing

A. Definition of Electronic Publishing

In Paragraphs 29-31, the Commission seeks comments on the definition of “electronic publishing.” In this regard, it should be pointed out that the only type of electronic publishing that is covered by Section 274 is electronic publishing “that is disseminated by means of [the] Bell operating company’s or any of its affiliates’ basic

¹⁰ 47 U.S.C. §152(b) (emphasis added).

¹¹ 47 U.S.C. §601(c)(1) (emphasis added).

telephone service."¹² The definition of "basic telephone service" is stated in terms of a "telephone exchange service."¹³ The term "telephone exchange service" is clearly different from "exchange access."¹⁴ If the BOC is providing origination or termination of a toll call disseminating the electronic publishing information, it is "exchange access," not "exchange service," that is being provided.¹⁵ Therefore, dissemination by a BOC's "basic telephone service" requires a situation where the electronic publishing information may be disseminated by the BOC's provision of exchange service -- i.e., dissemination by making a local call. For there to be the possibility that the information will be disseminated via a local call, the database called has to be housed in the BOC's service territory. Otherwise, the only role the BOC could play in the dissemination of the call would be the provision of "exchange access" -- which does not fall within the definition of "basic telephone service." In

¹² 47 U.S.C. §274(a) (emphasis added).

¹³ Section 274(i)(2) defines "basic telephone service" in relevant part as follows: The term "basic telephone service" means any wireline telephone exchange service, or wireline telephone exchange service facility, provided by a Bell operating company in a telephone exchange area, except that such term does not include - (A) a competitive wireline telephone exchange service provided in a telephone exchange area where another entity provides a wireline telephone exchange service that was provided on January 1, 1974 (emphasis added). 47 U.S.C. §274(i)(2).

¹⁴ The Communications Act defines "telephone exchange service" as follows: The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers inter communicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge ...". 47 U.S.C. §153 (47). Section 3(40) defines "exchange access" as follows: The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services (emphasis added). 47 U.S.C. §153 (16).

¹⁵ That "exchange service" is different from "exchange access" is also seen from the definition of a "local exchange carrier." Section 3(44) defines that term in relevant part as follows: The term "local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access (emphasis added.) 47 U.S.C. §153 (26).

conclusion, for a BOC's "electronic publishing" to be covered by Section 274, the database used to provide the service at issue has to be in the BOC's service territory.

The general definition of "electronic publishing" is so broad that an argument could be made that it covers a large percentage of the calls handled by a BOC. Arguably, such calls constitute the "dissemination ... of business ... materials." However, the exceptions to the definition are also far reaching, eliminating all situations where the BOC did not create or alter the material disseminated.¹⁶

One significant exception to the definition of electronic publishing is the "gateway" exception. It appears that most of the language of this exception was taken from an order issued under the Modified Final Judgment (MFJ). On March 7, 1988, Judge Greene granted a partial waiver of the MFJ's Information Services prohibition.¹⁷ Paragraph one of the Order in that case provides as follows:

"The separated BOCs shall be permitted to engage in the transmission of information as part of a gateway to an information service, but not in the generation or manipulation of the content of information. 'Transmission' shall mean the performance of the following functions: data transmission, address translation, protocol conversion, billing management, and introductory information content."¹⁸

The gateway exception in the Act similarly provides that:

The transmission of information as part of a gateway to an information service that does not involve the generation or alteration of the content of information, including data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to

¹⁶ 47 U.S.C. §274(h)(1) and §274(h)(2).

¹⁷ United States v. Western Elec. Co., 1988-1 CCH Tr. Cas. ¶67,918 (D.D.C.).

¹⁸ Id. at 57,635.

access electronic publishing services, which do not affect the presentation of such electronic publishing services to users. (emphasis added.)¹⁹

The gateway definition in the Act is broader in scope than the gateway definition in Judge Greene's order. Instead of limiting the permissible functions to the five functions set forth in the order, the functions permitted were defined as including the five functions, indicating that other functions could also be provided as part of a gateway.²⁰ The key to the definition is that the content of the information is not to be generated or altered by the BOC. Putting it another way, the key to the definition is that the information accessible through the gateway is information supplied by others. As explained by the Department of Justice, an "information gateway service permits users of an on-line service to obtain access to information supplied by other providers."²¹

The Commission requests parties to identify any enhanced services that they currently provide that appear to meet the definition of an electronic publishing service under the 1996 Act.²² Ameritech is evaluating a wide range of service offerings which, when ultimately configured, may constitute electronic publishing under the definitions set forth in Section 274. However, at the present time,

¹⁹ Section 274(h)(2)(C).

²⁰ Comparing the language of Judge Greene's Order to the Act's definition clarifies that the language "which do not affect the presentation of such electronic publishing services to users" modifies only the new category added -- i.e., "navigational systems."

²¹ United States v. Western Elec. Co., No. 82-0192 (D.D.C.), Memorandum of the United States in Support of the Motion of the Bell Companies for a Waiver to Permit them to Provide Information Services Across LATA Boundaries, at 3 n.7, (May 8, 1995).

²² NPRM (¶31).

Ameritech has not identified any service which it believes falls within the definition of electronic publishing.

B. The Separated Affiliate Requirement

The Commission seeks comment comparing the separation requirements of Section 272 to those of Section 274.²³ As the Commission logically notes, identifying the differences in these statutory requirements will facilitate BOC compliance.²⁴

The relevant separation requirements are set forth within Sections 272(b) and 274(b).²⁵ A comparison of the enumerated requirements reveals that the Section 272 separation obligations are a subset of the Section 274 duties. Section 272 sets forth five basic separation requirements between the Section 272 affiliate and the BOC: (1) independent operation, (2) separate books, records, and accounts, (3) separate officers, directors, and employees, (4) credit without recourse to BOC assets, and (5) arm's length transactions in writing and available for public inspection.²⁶ All five of these duties are subsumed within the Section 274 list of separation obligations.²⁷ Section 274 goes on to impose additional separation requirements upon electronic publishing activities not found within Section 272.²⁸

²³ NPRM (¶¶47-48).

²⁴ NPRM (¶47).

²⁵ 47 U.S.C. §§272(b) and 274(b).

²⁶ 47 U.S.C. §272(b).

²⁷ 47 U.S.C. §274(b), subsections (1), (2), (3), and (5)(A).

²⁸ See, e.g., 47 U.S.C. §274(b), subsections (5)(B) (no joint property ownership), (6) (use of BOC trademarks), and (7) (BOC hiring, training, purchasing, installation, maintenance and research).

The other principal difference between the separation requirements of Sections 272 and 274 relates to the chain of ownership. A Section 272 “separate affiliate” may own or be owned by the BOC entity as long as the separation requirements of Section 272(b) are satisfied. A “separated affiliate” under Section 274 cannot own²⁹ or be owned by the BOC entity.³⁰ In other words, a Section 274 separated affiliate must not track back through the BOC to the ultimate parent entity more than 10% of its ownership.

In Docket 96-149 (the Section 271-272 rulemaking), Ameritech supported the Commission’s tentative conclusion that a BOC may conduct all or some of its interLATA services and manufacturing activities requiring Section 272 separation through a single separate affiliate which meets the requirements of Section 272.³¹ Ameritech takes a similar position with respect to electronic publishing activities subject to the Section 274 separation requirements. Any combination or all of a BOC’s electronic publishing services may be conducted through a single separated affiliate meeting the requirements of Section 274. The plain language of Sections 274(b) and 274(i)(9) require appropriate separation between the electronic publishing entity and the BOC.³² The statute imposes no separation requirement among Section 274 electronic publishing services.

²⁹ Section 274(i)(8) defines the term “own” to mean a direct or indirect equity interest of more than 10% of an entity. 47 U.S.C. §274(i)(8).

³⁰ 47 U.S.C. §274(i)(9).

³¹ Comments of Ameritech at 63; Reply Comments of Ameritech at 35.

³² 47 U.S.C. §§274(b) and 274(i)(9).

The commission also seeks comment on whether a BOC may provide electronic publishing services (Section 274 services) and interLATA information services (Section 272 services) through the same entity or affiliate.³³ Ameritech believes that nothing within the 1996 Act prohibits the aggregation of Section 274 and Section 272 services within the same affiliate.³⁴ As Ameritech has stated in the context of combining either Section 272 or Section 274 services within the same entity, the requisite separation set forth in these statutes relates to the operation of the Section 272 or Section 274 businesses vis-à-vis the BOC. Separation among Section 272 or Section 274 services is not required. Similarly, separation between Section 272 and Section 274 services is not mandated by the 1996 Act.

The Commission requests comment on an array of issues and tentative conclusions regarding the Section 274(b)(5) separation requirement.³⁵ This provision states that an electronic publishing separated affiliate and a BOC shall have no common officers, directors, or employees nor own any property in common.³⁶

Because Section 274(b)(5) explicitly refers only to the separation between a separated affiliate and a BOC, the Commission tentatively concludes that a BOC may share officers, directors, and employees with an electronic publishing joint

³³ NPRM (¶48).

³⁴ Of course, the affiliate chosen to house both Section 272 and Section 274 services must comply with the separations requirements of both Sections. For example, the affiliate could not be owned or controlled by a BOC. 47 U.S.C. §274(i)(9).

³⁵ NPRM (¶¶39-42).

³⁶ 47 U.S.C. §274(b)(5).

venture.³⁷ Based upon this same explicit language, the Commission also tentatively concludes that a BOC and an electronic publishing joint venture may own property in common.³⁸ Ameritech agrees with both of these tentative conclusions. By its express terms, Section 274(b)(5) applies only to separated affiliates, not to electronic publishing joint ventures. In addition, the term “electronic publishing joint venture” is defined as a joint venture “owned by a Bell operating company or affiliate.”³⁹ (emphasis added). This definition explicitly authorizes joint property ownership by the BOC and the electronic publishing joint venture. Moreover, Section 274(c)(2)(C) plainly contemplates that BOC officers or other employees will participate in an electronic publishing joint venture and specifically authorizes BOC contributions of marketing and sales personnel to the joint venture.⁴⁰

The Commission asks whether Section 274(b)(5)(B) prohibits a BOC and a separated affiliate from sharing the use of property owned by one of the entities or from jointly leasing any property.⁴¹ Ameritech does not believe Section 274(b)(5)(B) prohibits such activities. The separation requirement is clear: no joint property ownership. Sharing the use of property or jointly leasing property cannot logically be fit within the prohibition on joint ownership. Had Congress intended a broader

³⁷ NPRM (¶39).

³⁸ *Id.*

³⁹ 47 U.S.C. §274(i)(5).

⁴⁰ 47 U.S.C. §274(c)(2)(C).

⁴¹ NPRM (¶42).

reach for Section 274(b)(5)(B), it could have easily accomplished this objective with broader language.

The Commission seeks comment on a variety of issues relating to the Section 274(b)(7) separation requirement. Section 274(b)(7) prohibits a BOC from performing a wide range of services on behalf of a Section 274 separated affiliate, including (1) hiring or training of personnel, (2) purchasing, installation, or maintenance of equipment (except for telephone service provided under tariff or contract), and (3) research and development.⁴²

The Commission notes that Section 274(b)(7) refers explicitly to the relationship between a BOC and a separated affiliate.⁴³ Paralleling its analysis of the Section 274(b)(5) separation requirement, the Commission tentatively concludes that a BOC is permitted to perform the activities specified within Section 274(b)(7) on behalf of an electronic publishing joint venture.⁴⁴ Ameritech supports this conclusion. The plain language of Section 274(b) applies the separation requirements of this provision only to separated affiliates, not to electronic publishing joint ventures. Since the 1996 Act permits BOCs to own electronic publishing joint ventures,⁴⁵ it logically follows that the BOC may directly participate in human resource, procurement, installation/maintenance, and research and development activities on behalf of the electronic publishing joint venture.

⁴² 47 U.S.C. §274(b)(7).

⁴³ NPRM (¶44).

⁴⁴ Id.

⁴⁵ 47 U.S.C. §274(i)(5).

With respect to the research and development prong of the Section 274(b)(7) separation requirement, the Commission asks whether there are any circumstances under which a BOC may share its research and development with a separated affiliate.⁴⁶ Ameritech maintains that Section 274(b)(7)(C) prohibits only BOC research and development activity for the sole or primary use of a separated affiliate. Any other research and development activity performed by a BOC would not be “on behalf of” the separated affiliate. If the BOCs were prohibited from performing any research or development “that may potentially be of use to a separated affiliate,”⁴⁷ considerable legitimate research and development activities would be curtailed or terminated due to the possibility that they may potentially be of use to a separated affiliate.

If a BOC is providing telephone service to a separated affiliate under tariff or contract subject to the requirements of Section 274, the Commission seeks comment on whether Section 274(b)(7)(B) would permit the BOC to purchase, install, and maintain transmission equipment for the separated affiliate.⁴⁸ Ameritech believes that the BOC should be permitted to undertake these activities for the separated affiliate as long as the transmission equipment is an integral part of the BOC’s provision of telephone service to the affiliates.

⁴⁶ NPRM (¶46).

⁴⁷ Id.

⁴⁸ NPRM (¶45).

C. Joint Marketing & Joint Ventures

1. Definition of "Joint Marketing"

The Commission tentatively concludes in paragraph 53 of the NPRM that the "joint marketing" restriction of Section 274(c)(1) includes (1) "advertising the availability of local exchange or other BOC services together with the BOC's electronic publishing services;" (2) "making [both of] those services available from a single source;" and (3) "providing bundling discounts for the purchase of both electronic publishing and local exchange services." Subject to the comments below, Ameritech agrees with the Commission's tentative conclusion.

The only prohibited marketing activities are those activities that are joint and involve the BOC and the electronic publishing affiliate working together. Thus, the joint marketing prohibition does not preclude unilateral marketing, promotion or sales activities by either the BOC or the electronic publishing separated affiliate. For example, suppose an electronic publishing affiliate establishes an Internet-based electronic yellow pages. If the BOC -- on its own and without any coordination with the electronic publishing affiliate or promotion of the affiliate's electronic publishing services -- purchases an electronic ad for the BOC's own services in the electronic publishing affiliate's Internet service, such action is not prohibited by Section 274(c)(1). Hence, the mere placement of an ad by a BOC is a unilateral action and does not involve a "coordinated" effort with the electronic publishing affiliate to jointly promote both of the BOC's and the electronic publisher's services. Any Commission definition of "joint marketing" should emphasize the necessity of joint activity of both the BOC and the electronic publisher.

In addition to this “unilateral” exception, Section 274(c)(2) provides three categories of permissible joint marketing activities to this overall joint marketing prohibition. Section 274(c)(1) notes as an introductory clause that the general joint marketing prohibition is subject to Section 274(c)(2).⁴⁹ Thus, joint marketing activities otherwise prohibited under the general prohibition of Section 274(c)(1) are permitted to the extent they satisfy one of the three categories of permitted joint marketing activities under Section 274(c)(2). For example, as discussed in greater detail below, the “inbound telemarketing” allows the BOC to provide both its services and the services of an electronic publisher “from a single source” while “teaming” allows the BOC and the electronic publishing affiliate to promote services “together.” Accordingly, the Commission’s definition of the joint marketing prohibition - like the introductory clause of Section 274(c)(1) -- should explicitly recognize that the general joint marketing prohibitions are subject to the permitted joint activities of Section 274(c)(2).⁵⁰

2. Interpretation of Section 274(c)(1)(B)

The Commission invited comments on the appropriate interpretation of Section 274(c)(1)(B). More specifically, the Commission has asked whether the phrase “that is related to the provision of electronic publishing” in Section 274(c)(1)(B) clarifies the phrase “promotion, marketing, sales, or advertising” or the

⁴⁹ “Except as provided in paragraph (2)....” 47 U.S.C. §274(c)(1).

⁵⁰ The Commission also requested comment on the interplay between the joint marketing provisions of Section 272(g) and 274(c). Ameritech believes that the joint marketing provisions of Section 272(g) are independent from the operation of the joint marketing provisions of Section 274(c). In opting for dramatically less restrictive joint marketing prohibitions relating to Section 272 activities, Congress has chosen to make a clear distinction between Section 272 and Section 274 activities.

word "affiliate." Ameritech agrees that it is difficult to understand the subtle difference, if any, between Sections 274(c)(1)(A) and (B). Section 274(c)(1)(A) is concerned with a BOC carrying out promotion, marketing, sales or advertising with a "separated affiliate." Section 274(c)(1)(B) is concerned with a BOC carrying out promotion, marketing, sales or advertising with an "affiliate." While the "separated affiliate" and "affiliate" distinctions will exist within a RBOC family of entities, Section 274(a) makes it clear that an "affiliate" cannot engage in "electronic publishing" -- only the "separated affiliate" or "electronic publishing joint venture" may provide electronic publishing services. As such, it is difficult to understand how Section 274(c)(1)(B) envisions an "affiliate" -- who cannot provide electronic publishing services -- may engage in activities "related to the provision of electronic publishing."

Although it is by no means clear, it appears, therefore, that the phrase "that is related to the provision of electronic publishing" in Section 274(c)(1)(B) modifies the phrase "promotion, marketing, sales or advertising" rather than affiliate. Both Sections 274(c)(1)(A) and (B) appear to be focused on the BOC's involvement in the promotion, marketing sales or advertising of an electronic publisher regardless of whether the electronic publisher is a "separated affiliate" or an "affiliate."

3. Inbound Telemarketing and Referral Services

Paragraph 55 of the NPRM seeks comments on the scope of permissible joint activities under Section 274(c)(2)(A). Although the NPRM discusses referral services, it does not discuss permissible inbound telemarketing activities of the BOC.

Section 274(c)(2)(A) allows the BOC to provide “inbound telemarketing . . . for a separated affiliate electronic publishing joint venture, affiliate or unaffiliated electronic publisher. . . .” Section 274(I)(7) defines the term “inbound telemarketing” to mean “the marketing of property, goods, or services by telephone to a customer or potential customer who initiated the call.”⁵¹ Thus, the BOC may provide “marketing” services on behalf of electronic publishers while the BOC sales representative is handling an inbound call initiated by a customer. As a permissible joint marketing activity, Ameritech believes the Commission’s rules should recognize that the term “marketing” as used in Sections 274(1)(7) and 274(c)(2)(A) contemplates a wide variety of services, including all aspects of promotion and selling as more fully detailed below.

Customers will benefit from the BOC’s provision of inbound telemarketing services for electronic publishers since they will be able to purchase a wider variety of services on a single call. On the inbound call, the BOC will be able to market its telecommunication services with the services of its electronic publishing affiliate.⁵² For example, on an inbound call establishing initial telephone service, the BOC sales

⁵¹ 47 U.S.C. §274(i)(7) (emphasis added).

⁵² In addition, since Congress has expressly authorized the BOC to provide inbound telemarketing services, BOCs should be encouraged to market/promote its ability to provide such services to electronic publishers who may purchase such services.

representative may ask the customer if the customer is interested in purchasing an electronic publishing service. The BOC sales representative can inquire about the customer's need for this service, actively sell and promote the electronic publishing service and consummate the sale for such service. At the same time, the BOC sales representative is free to sell any complimentary BOC telecommunications service -- such as an additional line for the electronic publishing service -- that the customer may be interested in.⁵³

Congress has foreseen the customer benefits of allowing the customer the opportunity to purchase all the necessary components on a single call. In establishing inbound telemarketing as a permissible activity that the BOC may undertake on behalf of electronic publishers, Congress expressly authorized BOCs to handle all aspects of the electronic publisher's sales process while on the inbound telephone call, including: (1) promoting the publisher's service(s) including quoting prices; (2) consummating a sale; (3) obtaining sales related information; (4) obtaining credit information; (5) forwarding all such information to the publisher; and (6) promoting the BOC's services to work in conjunction with the electronic publisher's services. All of these activities are encompassed within the word "marketing" as used in Section 274(I)(7).

⁵³ While the BOC may sell its services and the electronic publisher's services, it cannot discount regulated BOC services without appropriate regulatory authority. The electronic publisher, however, as the provider of an unregulated service, may price its service as it sees fit, including the ability to offer a discount - only on the electronic publisher's service -- in the event the customer purchases both the BOC and electronic publishing service at the same time. The ability of the electronic publisher to establish its own prices and discounts applies equally to any type of permitted joint marketing arrangement. In order to benefit consumers, the Commission's rules should encourage electronic publishers to offer such discounts.

The scope of inbound telemarketing services that the BOC may provide to electronic publishers is not altered if the electronic publisher is an affiliate. The inbound telemarketing activities listed above are services that the BOC may provide to an affiliate under Section 274(b). The provision of such services to the affiliate will not act to advantage the BOC's electronic publishing affiliate. Section 274(c)(2)(A) allows "all electronic publishers on request" to receive the same services the BOC provides to an affiliate. So long as the BOC meets this nondiscrimination test, it remains free to "promote, market, sell or advertise" the electronic publishing services of an affiliate. Given the availability of these services to competitors of the BOC's electronic publishing affiliates, the Commission's oversight of this Section should be focused on making the widest range of inbound telemarketing BOC services available to electronic publishers rather than restricting the BOC's provision of services.⁵⁴

4. Teaming Arrangements

In paragraph 56 of the NPRM, the Commission has asked for comment on the scope of permissible "teaming or business arrangements" activities between the BOC and electronic publishers. The Telecommunications Act of 1996 and its legislative history does not define which permissible joint marketing activities are included within the phrase "teaming or business arrangements."

⁵⁴ As is reflected in Section 274(b)(3), all transactions between the BOC and its electronic publishing affiliate must be pursuant to tariff or contract. Since BOCs' inbound telemarketing or referral services are not the provision of tariffed regulated telecommunications services, such services will be provided by a BOC to its electronic publishing affiliate via contract pursuant to accounting rules established by the Commission.